

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES

V.

CRIMINAL NO. NO. 04 10288 NG 12

ARCHIBALD MACLEOD

**MOTION TO STRIKE SURPLUSAGE FROM INDICTMENT**

The defendant moves to strike as surplusage from the indictment the entire contents of pages 21 through and including page 24 of the indictment, entitled "Notice of Additional Factors".

The additional factors referred to are matters under the United States Guidelines that have been declared unconstitutional. See *United States v. Booker and Fanfan* U.S. (2005).

See *United States v. Dose*, 2005 WL 106493, U.S. Dist. LEXIS 526 (N.D. Iowa, Jan. 12, 2005) (Zoss, M.J.) (recommending in light of *Booker* that defendants' motion to strike "notice of additional relevant facts" from superseding indictment as surplusage be granted). See also *United States v. Dottery*, \_\_\_ F. Supp. 2d \_\_\_, 2005 WL 174634, U.S. Dist. LEXIS 1071 (E.D. Mich. Jan. 24, 2005) (Lawson, J.) Because *Booker* has rendered addition of sentencing factors to indictment unnecessary, concluding that

[s]ince the superseding indictment added only the sentencing factors and nothing else, the Court believes that all prejudice, real and imagined, will be removed by dismissing the superseding indictment and proceeding to trial on the original indictment.

DATED: February 7, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the within document was served upon the attorney of record for the United States, AUSA David G. Tobin, United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA and a courtesy copy to Lisa Roland, Courtroom Clerk for Honorable Charles B. Swartwood, III, United States Magistrate Judge and to the attached service list by mail and electronic filing, which was e-filed this day.

/s/ Roger Witkin

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**DATE:** February 7, 2005